

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

EDDIE GAMBLE,)	
)	
Petitioner,)	
)	1:11CV497
v.)	1:06CR192-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, has submitted what are labeled as three habeas corpus petitions (docket nos. 116, 118, 120), as well as two requests to proceed *in forma pauperis* (docket nos. 117, 119). In all of the habeas petitions, he seeks to attack his criminal conviction in this court. The proper vehicle for doing this is a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Therefore, his habeas petitions will be treated as a § 2255 motion and two amendments to that motion. There is no filing fee associated with § 2255 motions, which means that the *in forma pauperis* applications are unnecessary and will be denied for that reason. As for the § 2255 motion and its amendments, they cannot be further processed because court records reveal that Petitioner has previously attacked the same conviction and sentence in a § 2255 motion (1:08CV926). Consequently, Petitioner must move in the Fourth Circuit Court of Appeals for an order

authorizing this district court to consider the current motion. This is required by 28 U.S.C. § 2255 and 28 U.S.C. § 2244. *See* AO 243 (MDNC 3/97), *Instructions*, ¶ (4), which is enclosed. Because of this pleading failure, this particular motion should be filed and then dismissed.

IT IS THEREFORE RECOMMENDED that this action be filed as a motion under 28 U.S.C. § 2255 and then dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the court of appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS THEREFORE ORDERED that Petitioner's *in forma pauperis* applications are denied.

IT IS FURTHER ORDERED that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2255 motions in this court and Motions for Authorization in the court of appeals, and four copies of § 2255 motion forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2255 motion which can be submitted in this court if Petitioner obtains approval from the Fourth Circuit.


Wallace W. Dixon, U. S. Magistrate Judge

June 28, 2011